

Loudoun County Planning Commission

MEMORANDUM

DATE: March 24, 2010

TO: The Loudoun County Planning Commission

FROM: The Chesapeake Bay Preservation Act ("CBPA") Subcommittee

SUBJECT: Subcommittee Report to the Planning Commission

The CBPA Subcommittee met on March 11, 13, 16, and 18 and reviewed the draft amendments. Discussion was primarily focused on the Chesapeake Bay Preservation Ordinance ("CBPO"), the draft Revised General Plan ("Plan") policies, and the Issues Matrix. A number of stakeholders participated at each of the meetings and contributed background materials and expertise to the discussion. The Subcommittee also received input from Joan Salvati, DCR Chesapeake Bay Local Assistance Division Director, and Daniel Moore, locality liaison, who attended the March 16 meeting. Ms. Salvati and Mr. Moore responded to questions regarding measuring success, flexibility, assistance available to the County, legal concerns, and other matters.

The Subcommittee has recommended changes to various sections of the CBPO and Plan. This memo highlights some of the recommendations made by the Subcommittee, the items that the Subcommittee feels should be discussed by the full Commission, and recommended items that will be included in a letter to the Board of Supervisors for their consideration. The attached Matrix and draft text reflect the Subcommittee's recommendations.

SUBCOMMITTEE RECOMMENDATIONS

Resource Protection Area (RPA) Exceptions (Section 1222.23 of the CBPO)

Matrix Item 1: The Subcommittee has recommended that the Board of Supervisors rule on RPA Exceptions concurrent with legislative applications. This change would be more efficient in that it would combine the public hearing required for the RPA Exception and the land use application. The Chesapeake Bay Review Board (CBRB) would be responsible for Exceptions submitted with administrative applications. This process is similar to that used in Fairfax County. This also adds a tiered appeal process (Section 1222.24 of the CBPO) where Administrator decisions are appealed to the CBRB; the CBRB decisions are appealed to the Board of Supervisors; and the Board of Supervisors decisions are appealed to Circuit Court.

Mapping the RPA

Matrix Item 4: The Subcommittee recommended that the staff-recommended RPA map be updated with field-verified perennial streams along the Fairfax County line. Stakeholders noted that the map does not include connected wetlands and that it may not include all

perennial streams and water bodies underestimating the full extent of the RPA impact. During the discussion, the Subcommittee reviewed several options for including connected wetlands and additional perennial streams and water bodies and compared estimated RPA delineations for several development projects to compare the County map against field-verified data and elected to retain the current map, with the exception of updating the stream connections along the Fairfax County line. The Chesapeake Bay Preservation Area Designation and Management Regulations ("Regulations") only require that the general extent of the Chesapeake Bay Preservation Areas (the RPA and the Resource Management Area) be mapped due to the fact that site-specific RPA delineations are required for all disturbances over 2,500 square feet. Therefore, the map is not intended to identify all affected areas. Staff has prepared a map depicting all property located within 200 feet of streams and water bodies where the RPA delineation may be required following a screening process for potential RPA features in cases where disturbances over 2,500 square feet are proposed. This eliminates the need to perform the RPA delineation on properties located more than 200 feet from streams and water bodies. The Commission recommended that this "screening tool" be provided in addition to the draft CBPA map to identify areas that may potentially be affected by the draft regulations.

Intensely Developed Areas (IDAs)

Matrix Item 8: Stakeholders have proposed designating the Route 28 Tax District as an Intensely Developed Area, which would allow additional encroachments into the 100-foot Buffer Area located adjacent to the RPA. The Subcommittee reviewed the criteria to establish a prospective IDA. The Regulations specify that the IDA is intended for areas where development is concentrated as of the local program adoption date where little to none of the natural environment remains. Stakeholders presented a map showing the potential for additional perennial streams to be designated as RPA in the Tax District to further explore the potential impact of the RPA. Following the analysis, the Subcommittee agreed that the Route 28 Tax District as a whole does not meet the criteria for an IDA, but that some individual areas within the District may qualify for IDA designation. No specific areas were identified for potential IDA designation during the Subcommittee discussion. However, the Subcommittee did receive clarification from Joan Salvati DCR Chesapeake Bay Local Assistance Division Director, and the County Attorney's Office that IDAs can be designated in the future based upon the conditions that existed at the time of adoption.

Minimum Lot Size in Relation to the RPA (Section 1222.16 of the CBPO)

Matrix Item 87: The Subcommittee endorsed the compromise recommended by staff in response to the stakeholder proposal to reduce the lot size and lot area that must remain outside the RPA. The entire lot up to 20,000 square feet must be located outside the RPA for lots served by public water and sewer. For lots not served by public water and sewer, the entire lot up to 40,000 square feet must be outside the RPA. The Subcommittee also decided that the minimum building distance from the RPA should be equal to the Zoning Ordinance yard requirement, as opposed to measuring the yard itself from the RPA.

Degree of Flexibility

Matrix Item #51, #127, #151: Stakeholders have disputed staff's position that based on the Board's direction regarding the extent of the RPA, the extent of the RMA, and which of the 11 Performance Criteria to pursue, there is limited flexibility in applying the Regulations. Stakeholders believe that since Loudoun County is entering the program voluntarily, there is flexibility in application of the standards.

In response to these concerns, the County Attorney reviewed each section of the proposed Ordinance and identified which sections were derived from the Virginia Administrative Code, the Code of Virginia, Federal regulations or other County Ordinances, and guidance from DCR, which have limited flexibility and those sections that were derived from, other jurisdictions or developed by staff, which offered more flexibility. In addition Joan Salvati, DCR Chesapeake Bay Local Assistance Division Director, clarified DCR's recommendation that provisions selected should be adopted in their entirety and that CBLAD will be able to assist the County in administering those provisions that adhere to the Regulations.

ITEMS FOR COMMISSION DISCUSSION

Exempt Land Disturbance in the RPA (Section 1222.11 of the CBPO)

Matrix Item 11: The Subcommittee discussed whether or not small land disturbances that do not require a building permit, 150 square feet or less, should be exempt from the provisions of the Ordinance. Concern was expressed that landowners would be prohibited from placing small sheds or barns in the RPA and would be required to prepare a Water Quality Impact Assessment prior to any disturbance in the RPA. It was noted that Fairfax allows these structures within the RPA primarily due to the fact that they do not have a mechanism to permit structures under 150 square feet in size, while Loudoun County does through the zoning permit. The CBPO has been drafted consistent with the Regulations, which prohibit new accessory structures in the RPA. The Subcommittee did not reach consensus on this issue and elected to discuss this with the full Commission.

Grandfathering Provisions

Matrix Item 16: The County Attorney has prepared draft transition rules addressing stakeholder concerns about grandfathering and vesting for projects that are approved or actively under review by the County. The Fairfax model is being considered, whereby any development plan that has been officially accepted, approved, or obtained a permit will not have to get an exception under the CBPO to complete the development if the developer has diligently pursued completion and meets the applicable requirements to the extent possible. The Subcommittee discussed several factors that go into deciding when a project may be "grandfathered" including the specificity of the approval regarding the location of uses and the proposed density; to what extent the project needs to comply with RPA buffer requirements. The Subcommittee's direction was to continue to develop the draft language based on the Fairfax model and to present the draft to the full Commission.

Land Disturbance Threshold (Section 1222.17 of the CBPO)

Matrix Item 21: The Subcommittee debated the merits of increasing the threshold for land disturbance from the proposed 2,500 square feet back to the current 10,000 square feet. Concern was expressed that property owners would be faced with RPA delineation and engineered plan requirements for minor improvements on their properties and that farmers may be particularly impacted. Stakeholders also noted the potential impact on septic tank and drainfield construction or repair. The Board directed staff to pursue the 2,500 square foot threshold performance criterion in developing the CBPO. In order to reduce the impacts associated with the provision, the Subcommittee modified the CBPO to ensure that the RPA delineation would not be required except where disturbances greater than 2,500 square feet are proposed within 200 feet of a stream or water body and that the engineered plan would only be required when disturbances are proposed within 100 feet of the delineated RPA. Following these modifications, the Subcommittee elected to retain the 2,500 square foot threshold, but recommended that it be discussed by the full Commission. This process is outlined in the attached flow charts. A cost estimate table prepared by Wetlands Studies and Solutions, Inc. outlining the cost associated with studies and plans required by the Ordinance is also attached.

Administrative Waiver for Loss of A Buildable Area (Section 1222.19 of the CBPO)

Matrix 61, 135: The proposal by environmental stakeholders is to set specific limitations for the amount of area that can be disturbed and the amount of impervious surface that can be created in the RPA Buffer Area to further define the term "reasonable buildable area." The stakeholders suggested that the approach used in Fairfax County be employed, whereby disturbances in the RPA Buffer Area are limited to 10,000 square feet exclusive of septic drainfields and driveways and new impervious area is limited to 5,000 square feet, exclusive of impervious area associated with the driveway. Projects that exceed these established thresholds would not be eligible for the administrative waiver and would have to be processed as exceptions. Staff recommended that a specified limit not be established due to the need to conduct a site-specific evaluation of each request and to consider the constraints of each lot or parcel, including other applicable environmental ordinances. The Subcommittee did not reach consensus on this issue and elected to discuss this with the full Commission.

Buffer Area Requirements (Section 1222.14.e of the CBPO)

Matrix Item 86: The CBPO requires the full width of the buffer (100 feet) to be planted in accord with a planting plan approved by the Administrator at the time silviculture or agriculture uses are to be converted to other uses. The draft CBPO requires the planting plan to be submitted in conjunction with the plan of development at the time the property is developed as outlined in Section 1222.14.e.i. Stakeholders recommended the requirement be changed to allow the buffer to reestablish naturally. The Subcommittee debated the impact on landowners, the potential for invasive species of plants to establish with the buffer, the required plantings, and other factors but did not reach a consensus on this issue and elected to discuss this with the full Commission.

ITEMS FOR THE LETTER TO THE BOARD OF SUPERVISORS

Matrix Item 2, 134: The Board should ensure the process works efficiently by providing the tools to aid owners in processing applications affected by the CBPO. The Board should consider submittal checklists, interactive templates and other tools. The Board needs to maintain adequate staff to meet new review needs and should consider increasing fees to offset costs.

Matrix Item 25, 60, 153, 180: The Ordinance addresses only part of the water quality issue. The Board should support development of educational materials, flow charts and templates to assist property owners in completing the Water Quality Impact Assessment (the Minor WQIA) and to encourage successful implementation of other requirements of the Ordinance. Ongoing educational outreach to the agricultural community needs to encourage farm practices that protect water quality and offer alternatives to fencing off their streams. Management of invasive species within the buffer should also be addressed.

Matrix Item 16: The Board should consider a grandfathering policy similar to Fairfax County to minimize the impact of the new regulations on projects that are already in the “pipeline” and actively pursuing approval and construction.

Matrix Item 81: NVBIA/NAIOP recommended that the Zoning Ordinance be amended to provide flexibility regarding minimum lot size, minimum setbacks and yards, and maximum heights in order to facilitate a design that avoids the RPA while achieving the permitted density. The Commission supported staff’s observation that the proposed amendments are outside the scope of the current amendments and recommended that this be considered as a separate amendment in the future, if it is determined that it is needed.

Matrix Item 141: The Commission encourages the Board to support legislation that places limits on the use of fertilizers and manure in buffer areas. Delegate Plum introduced a fertilizer legislation Bill during the last General Assembly Session that was passed over until next year that could benefit water quality.

Matrix Item 174: Stakeholders noted some discrepancies between the Revised General Plan text and adopted Zoning Ordinance text related to Steep Slopes. While this is not related to the scope of the current effort, the Commission recommends that Board review this item to identify whether or not these discrepancies should be addressed.

SUGGESTED MOTIONS

1. I move that the Planning Commission forward CPAM 2009-0002, ZOAM 2009-0004, and DOAM 2009-0004 and Attachments 1-7,3 as amended through March 31, 2010 to the Board of Supervisors with a recommendation of approval.

OR

2. I move an alternate motion.

ATTACHMENTS

1. Text Edit Memorandum
2. Chesapeake Bay Preservation Ordinance
3. Code Amendments
4. Zoning Ordinance Amendments
5. FSM Chapter 7
6. FSM Chapter 8
7. Revised General Plan
8. Countywide Transportation Plan
9. Flow Charts
10. Cost Estimate Table
11. CBPO Draft Grandfathering Policy
12. Stakeholder/Planning Commission Public Hearing Comment Matrix